

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: NC HEARING AID DEALERS AND FITTERS BOARD

RULE CITATION: 21 NCAC 22L .0101

RECOMMENDED ACTION:

Return the rule to the agency for failure to comply with the Administrative Procedure Act

Approve, but note staff's comment

X Object, based on:

X Lack of statutory authority

X Unclear or ambiguous

Unnecessary

Failure to adopt the rule in accordance with the APA

Extend the period of review

COMMENT:

*In (a) page 2 lines 3 – 5 it is unclear how it is determined whether it is two or three who will serve on the committee, whether there are any standards for making that determination, and who selects and how they are selected.*

*It is unclear what actions are contemplated in (a)(3) line 11 where the committee may “undertake other actions” in the course of investigating a complaint. While the board through its committee has broad authority to do many things in conducting an investigation the actions specified must be clear.*

*Paragraphs (a)(2) and (d) are not consistent with each other and make the rule unclear. The former states that it is the committee that determines whether to issue subpoenas (as long as the President or Secretary-Treasurer signs off). The latter paragraph states that it is the board (presumably the entire board) which must approve the issuance of a subpoena.*

*In (f)(1) line 26 there are no standards for determining how the board will approve “clos[ing] the matter.” There is no authority to set those standards outside rulemaking.*